

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DAVID WILLIAM MCCOLLUM, §
 §
VS. § CIVIL ACTION NO.4:07-CV-719-Y
 §
NATHANIEL QUARTERMAN, §
Director, T.D.C.J. §
Correctional Institutions Div., §

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner David William McCollum under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on June 25, 2008; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on July 10, 2008.

The Court, after **de novo** review, concludes that the Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be dismissed with prejudice as time-barred pursuant to 28 U.S.C. § 2244(d)(1)-(2), for the reasons stated in the magistrate judge's findings and conclusions, and as set forth herein.

In his written objections to the magistrate judge's report and recommendation that his petition be dismissed with prejudice as time-barred, McCollum contends that his state application for writ of habeas corpus should have been counted to toll the federal limitations period under the "mailbox rule" because he deposited it in the prison mail system prior to the expiration of the applicable

one year. In *Howland v. Quarterman*, 507 F.3d 840, 845 (5th Cir. 2007), however, the United States Court of Appeals for the Fifth Circuit expressly held that the prison mailbox rule does not apply to the filing requirements for a state application for habeas relief under Texas law. Thus, McCollum's objections must be overruled.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

David William McCollum's petition for writ of habeas corpus is DISMISSED WITH PREJUDICE.

SIGNED July 14, 2008.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE